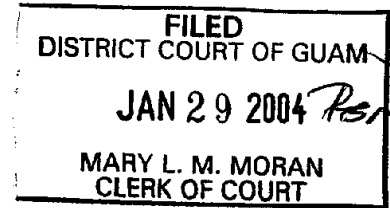


1 Steven A. Zamsky, Esq.  
2 ZAMSKY LAW FIRM  
3 Suite 805, GCIC Building  
4 414 West Soledad Avenue  
5 Hagåtña, Guam USA 96910  
6 Telephone: (671) 477-3637  
7 Facsimile : (671) 472-1584



8 Attorneys for Plaintiff Shell Guam, Inc.

9  
10 IN THE DISTRICT COURT OF GUAM

11 SHELL GUAM, INC., )  
12 a Guam corporation, )  
13 )  
14 Plaintiff, )  
15 vs. )  
16 M/V GYOKO MARU NO. 18 )  
17 and NIKKI SUISAN CORPORATION, )  
18 a Japan corporation, )  
19 Defendants. )

CIVIL CASE NO. CIV03-00021

AFFIDAVIT OF STEVEN A. ZAMSKY  
IN SUPPORT OF APPLICATION FOR  
FINAL JUDGMENT BY DEFAULT AND  
FOR FRCP 54(b) CERTIFICATION AS  
TO DEFENDANT NIKKI SUISAN  
CORPORATION

20 GUAM U.S.A. )  
21 ) ss:  
22 MUNICIPALITY OF HAGÁTÑA )

23 STEVEN A. ZAMSKY, being first duly sworn, depose and say as follows:

24 1. I am the attorney of record for Plaintiff Shell Guam, Inc. herein which is asking that  
25 Final Judgment be entered in favor of Plaintiff Shell Guam, Inc. and against Defendant Nikki Suisan  
26 Corporation.  
27  
28

ORIGINAL

2. I make this Affidavit in Support of the Application for Final Judgment by Default in favor of Plaintiff Shell Guam, Inc. and against Defendant Nikki Suisan Corporation and having personal knowledge of all matters set forth herein if called to testify as to said matters I could and would competently do so.

3. The Default against Defendant Nikki Suisan Corporation was entered on January \_\_\_\_\_, 2004. This is a default against Defendant Nikki Suisan Corporation *in personam*.

4. Attached hereto is a copy of the Promissory Note (in letter form and addressed to Plaintiff) signed by Defendant Nikki Suisan Corporation showing the principal amount of \$292,300.61. No payments have been made since then. The invoices provided that amounts that are due and payable and unpaid for more than thirty (30) days shall accrue interest at the rate of 18% per annum thereafter.

5. The principal amount together with interest at the rate of 18% is the sum of \$237,793.72 and set out as follows:

Principal	\$ 292,300.61
Pre-Judgment Interest to 11-20-03	<u>42,667.88</u>
	\$ 334,968.49
Less Credit Bid sale of M/V Gyoko Maru No. 18	- 40,000.00
Less Credit Bid sale of M/V Tenryu Maru No. 28	- 35,000.00
Less Credit Bid sale of M/V Hiro Maru No. 11	<u>- 30,000.00</u>
	\$ 229,968.49
Additional Pre-Judgment Interest from 11-21-03 to 01-27-04	
@ 18 % per annum or \$113.41 per day x 69 days	<u>7,825.23</u>
	\$ 237,793.72

///

///

Therefore the total principal and interest of \$237,793.72 together with further interest at the rate of 18% per annum until entry of the Final Judgment, and interest thereafter accruing as required by law.

6. The total amount of attorneys fees and costs paid or incurred as of December 31, 2003 is the sum of \$9,791.67 and is set out as follows:

Attorneys fees and costs to 11-30-03	\$ 8,972.50
Attorneys fees and costs to 12-31-03	<u>819.17</u>
	\$ 9,791.67

7. I have received no contact from any person with regard to any potential claim with respect to Defendant Nikki Suisan Corporation.

8. Pursuant to FRCP 4(b), Defendant Nikki Suisan Corporation has actual notice of this action.

9. This Final Judgment by Default will be *in personam* against Defendant Nikki Suisan Corporation.

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10. The *in personam* action against Defendant Nikki Suisan Corporation is based upon its action as agent and owners for certain vessels pursuant to which it became indebted to Plaintiff Shell Guam, Inc..

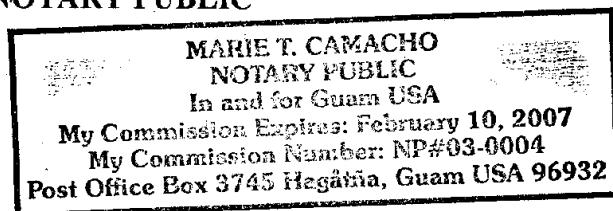
FURTHER THE AFFIANT SAYETH NAUGHT.

Dated this 28<sup>th</sup> day of January 2004.

  
STEVEN A. ZAMSKY, AFFIANT

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, duly sworn and commissioned in and for Guam USA, this 28<sup>th</sup> day of January 2004 by STEVEN A. ZAMSKY.

  
NOTARY PUBLIC



2003年 1月28日(水) 14:25/番頭 /文書番号4202771296 P 1

## **NIKKI SUISAN CORPORATION**

3-4, Sachigaoka, Asahi-ku, Yokohama-shi, 〒241-0822 JAPAN.

TEL:81(45)366-5411 FAX:81(45)366-5411

TO: MESSRS. SHELL GUAM, INC.

ATTN. A GENERAL MANAGER IN CHARGE / MS. TANIA

FM: NIKKI SUISAN CORP.

TO BEGIN WITH, WE WOULD LIKE TO MOST HUMBLY APOLOGIZE YOU THAT WE ARE MUCH TROUBLING YOU OF BIG OUTSTANDINGS WHICH IS LOSING OUR CREDIT. ALSO FOR OUR OVERDUE RESPONSE UP TO TODAY, AND WE SHOULD CONSULT WITH YOU OF THE SITUATION EARLIER.

AS YOU MIGHT HAVE ALREADY KNOWN, THE ECONOMICAL MARKET IN JAPAN IS STILL VERY DULL NOT ONLY IN THE FISHERY BUT ALSO IN OTHER MOST OF INDUSTRIES.

WE WOULD ALSO HAVE TO EXPRESS OUR DEEP APOLOGY OF MUCH TROUBLING TO THE OTHER PARTIES CONCERNED INCLUDING YOU.

WE ARE NOW FACING THE UNPRECEDENTED POOR CATCHES IN PACIFIC OCEAN INCLUDING MICRONESIAN WATERS. AND BESIDES, IN JAPANESE MARKET, THE SITUATION OF ACCEPTING MUCH TERRIBLE PRICE IS GOING ON LONG.

THE SAME THING CAN BE SAID OF OUR FLEET. SAME AS OTHER BOATS BELONG TO OTHER AGENTS. OUR ADVANCE MONEY TO OUR FLEET HAS ALREADY REACHED TO US\$2,000,000. MUCH REGRETABLE THIS IS PRESENT STATE THAT IT SEEMS TO BE AT THIS MOMENT VERY DIFFICULT FOR US TO COLLECT THESE CLAIMS DESPITE OF TRYING BEST TO COLLECT AS OUR DUTY EVERYDAY BECAUSE OF BANKRUPTCIES, SINKINGS, RUN-AWAY ETC.

ALTHOUGH WE HAVE BEEN LENIENTLY MAKING TEMPORAL PAYMENTS ON ALL OWNERS' BEHALF OF THE COSTS OF FUEL OIL, AIR-FREIGHTING, LIVING EXPENSE ETC, WE ARE ASHAMED TO SAY THAT IT IS ALMOST IMPOSSIBLE TO COLLECT THESE CLAIMS UNDER THIS RECESSION AND THIS MEANS ALL DUE TO OUR LACK OF DISCRETION.

## NIKKI SUISAN CORPORATION

3-4, Sachigaoka, Asahi-ku, Yokohama-shi, 〒241-0822. JAPAN.

TEL:81(45)366-5411 FAX:81(45)366-5411

WE ANYHOW HAVE TO TAKE FULL RESPONSIBILITY OF PAYMENTS FOR ANY SHIPMENTS ORDERED THROUGH OURS.

IN THIS CONNECTION, WE WILL HEREBY CONFIRM THAT THE OUTSTANDING FOR YOU IS US\$292,300.61 AS OF DEC.31,2002.

AND WE WOULD LIKE TO BEG YOUR KIND UNDERSTANDING SOMEHOW FOR PAYING IN MONTHLY INSTALLMENTS OF US\$30,000 AT THE END OF EVERY MONTH FROM MARCH, 2003 WITH TEN TIMES WHICH IS LITTLE-BY-LITTLE PACE TO THE OUTSTANDING. (TENTH/LAST PAYMENT WILL BE US\$22,300.61) MEANTIME, OF COURSE, WE WILL TRY TO EXECUTE OUR UPMOST EFFORTS OF REPAYING AS SOON AS POSSIBLE.

AS YOU MIGHT HAVE BEEN KNOWN WELL, JAPANESE BOATS ARE KEEPING EVACUATING TO OTHER COUNTRY PORT BASE WATERS FROM GUAM BASE WATERS GRADUALLY. THIS MEANS THAT MOST OF OWNERS ARE DESPERATELY STRUGGLING TO FIND SOME WAYS OUT OF THE DIFFICULTY EVEN IF VIOLATING THE LAW IN JAPAN.

WE SO FAR DO NOT HAVE INTENTION TO TRANSFER ITS FISHERY BASE TO OTHER COUNTRY COMMITTING THE ILLEGAL ACT, AS WE ALSO HAVE BEEN THROUGH TRIAL AND ERROR REPEATEDLY.

AGAIN, AS WE WILL TRY HARD TO MAKE EARLIER SETTLEMENT, WE WOULD SINCERELY BEG YOUR KIND UNDERSTANDING AND COOPERATION.

JAN, 28, 2003

  
S. HARADA, PRESIDENT  
OF NIKKI SUISAN CORP.